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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

PETR ANDRICHUK et al., Plaintiffs and Appellants, v. BANK OF AMERICA, N.A., et al., Defendants and Respondents.	C086671 (Super. Ct. No. SCV0039327)

In this postforeclosure action, plaintiffs Petr and Maria Andrichuk appeal from the judgment of dismissal entered after the trial court sustained without leave to amend the demurrer to their latest pleading. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We recite only the pertinent facts and procedural history of this case.

Factual Background

In May 2005, plaintiffs (husband and wife) purchased a residential property located at 1757 Park Oak Drive, Roseville (the property). They executed an adjustable rate promissory note (Note), secured by a deed of trust (DOT) on the property. The Note indicates they borrowed $717,200 from Countrywide Home Loans, Inc. (Countrywide). The DOT identified them as the borrowers, Countrywide as the lender, CTC Real Estate Services as the trustee, and Mortgage Electronic Registration Systems, Inc. (MERS), as the beneficiary.

In August 2011, MERS assigned the beneficial interest under the Note and the DOT to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loan Servicing, LP (BAC). In September 2011, MERS substituted Recontrust Company, N.A. (Recontrust), as the trustee. On that same day, MERS assigned the beneficial interest under the Note and the DOT to Bank of America, N.A. (Bank of America), as successor by merger with BAC.

In February 2014, Bank of America substituted Clear Recon Corporation (CRC) as the trustee. Later that same day, CRC recorded a notice of default, which indicated that plaintiffs were in arrears on their loan in the amount of $218,142.76.

In May 2014, MERS, again, assigned the DOT to Bank of America. The assignment stated that it was a "[r]e-recording" of the August 2011 assignment of the DOT to correct borrower, original lender, assignee, and assignor. According to defendants, "[t]his corrective assignment reflected the assignment to Bank of America . . . which was the successor by [July 1, 2011 de jure] merger [with] BAC . . . ."

In April 2016, CRC recorded a notice of trustee's sale. In May 2016, Bank of America Home Loans notified plaintiffs that they were in arrears on their loan in the amount of $324,192.45.

In late February 2017, plaintiffs filed a voluntary Chapter 11 bankruptcy petition. The following day, CRC sold the property at a foreclosure sale. Thereafter, a trustee's deed upon sale was recorded.

Procedural History

In April 2017, plaintiffs filed this action against CRC, Bank of America, MERS, and Recontrust.[1] The operative complaint is the verified first amended complaint (FAC), which was filed in September 2017. It alleges four causes of action: wrongful foreclosure, unfair or deceptive business practices in violation of Business and Professions Code section 17200 et seq. (commonly know as the unfair competition law (UCL)), fraud by deceit, and violation of Civil Code section 2934a.

In October 2017, Bank of America, MERS, and Recontrust (collectively, defendants) demurred to the FAC. Plaintiffs filed a written opposition. After hearing oral argument, the trial court sustained the demurrer without leave to amend.

Following the entry of the judgment of dismissal, plaintiffs filed a timely notice of appeal.[2]

DISCUSSION

1.0 Appellate Record

Preliminarily, we note that the appellate record does not include a reporter's transcript of the hearing on defendants' demurrer to the FAC. Nor does it contain the trial court's written order explaining its reasons for sustaining the demurrer without leave to amend. Although we do not countenance plaintiffs' failure to provide a complete

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[1] The appellate record does not include the complaint.

[2] After the judgment of dismissal was entered, plaintiffs filed a motion for reconsideration of the trial court's order sustaining defendants' demurrer without leave to amend. The court denied the motion, finding that the entry of judgment divested it of authority to rule on the merits of the motion.

record of the relevant trial court proceedings, we conclude that affirmance on the basis of an inadequate record is not warranted. As we note below, we review an order sustaining a demurrer under a de novo standard. (*Phillips v. Bank of America, N.A.* (2015) 236 Cal.App.4th 217, 224.) In that review, "we are not required to accept the trial court's legal reasons or conclusions of law; we review its ruling, not its reasoning." (*Qualcomm, Inc. v. Certain Underwriters at Lloyd's, London* (2008) 161 Cal.App.4th 184, 203-204 (*Qualcomm*); *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 517 [in an appeal from an order sustaining a demurrer, the appellate court "is not bound by the trial court's construction of the complaint, but must make its own independent interpretation"].)

Because we are not bound by the trial court's ruling on the legal sufficiency of the FAC, we find that the appellate record is adequate to consider plaintiffs' claims of error. The record includes the FAC and attached exhibits, and the parties' trial court briefs regarding defendants' demurrer and request for judicial notice. These documents are sufficient for us to ascertain the arguments raised below and to determine whether the trial court erred, especially given that in reviewing a ruling on a demurrer our analysis is limited to the operative complaint's four corners, attached exhibits, and judicially noticeable matters. (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400 (*Hoffman*).) Defendants, moreover, do not argue that plaintiffs have made an argument on appeal that was not asserted below.

2.0 Standard of Review

We review an order sustaining a demurrer without leave to amend de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1469.) "[W]e accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law." (*Yvanova v. New Century Mortgage Corp.*

(2016) 62 Cal.4th 919, 924 (*Yvanova*).) We may also consider documents attached to the complaint and matters subject to judicial notice. (*Hoffman*, *supra*, 179 Cal.App.4th at p. 400.) To the extent the factual allegations in the complaint conflict with the complaint's exhibits, we rely on the contents of the exhibits. (*Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659, 665.)

The plaintiff bears "the burden of demonstrating that the demurrer was sustained erroneously." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.) "If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Such a showing can be made for the first time on appeal. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.)

3.0 The Trial Court Properly Sustained the Demurrer

3.1 *Wrongful Foreclosure*

Plaintiffs' wrongful foreclosure cause of action is predicated on the theory that the August 2011 assignment of the DOT, the September 2011 substitution of trustee, and the September 2011 assignment of the DOT are void. In support of this claim, plaintiffs allege that the August 2011 assignment of the DOT did not transfer the Note. Plaintiffs further allege that the August and September 2011 assignments of the DOT and the September 2011 substitution of trustee contain forged or robo-signed signatures of individuals who did not have the authority to execute the documents. We conclude that plaintiffs have failed to show error.

Plaintiffs' allegation regarding the transfer of the Note is contradicted by the language of the August 2011 assignment of the DOT, which states that MERS assigned "all beneficial interest under [the DOT] . . . together with the note(s) and obligations therein described . . . ." As for plaintiffs' remaining allegations, the FAC alleges, at most, voidable, not void, transactions, which do not support a wrongful foreclosure action.

A void assignment is one that has no force or effect and which could not be ratified or validated by the parties to the assignment, even if they wished to do so; a voidable assignment is one that is valid unless an action is taken to void it. (*Yvanova, supra,* 62 Cal.4th at p. 936.) A borrower does not have standing to challenge the foreclosure if the assignment was merely voidable. (*Id.* at pp. 936, 942-943.) "When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the assignment rather than to herself." (*Id.* at p. 936.)

Although robo-signing allegations have been made in many cases, plaintiffs fail to cite any authority in which a court set aside a trustee's sale based on a robo-signed document. " '[T]o the extent that an assignment was in fact robo-signed, it would be voidable, not void, at the injured party's option.' [Citation.] The bank, not the borrower would be the injured party." (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 819 [discussing other cases reaching the same result]; see *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 46.) The same is true with respect to plaintiffs' allegations of forgery and lack of authority to execute documents. (See *Kalnoki,* at p. 46 [forged documents "would be voidable, not

void, at the injured party's option"].) Even if true, plaintiffs' allegations have no bearing on the validity of the foreclosure process here. This is because the allegations in the FAC and the exhibits attached thereto show that the accuracy of the salient facts, including that plaintiffs were in default on their loan and the amount owed, are not reasonably in dispute. (See *ibid.*) Accordingly, the trial court properly sustained defendants' demurrer to plaintiffs' first cause of action for wrongful foreclosure.

We find no merit in plaintiffs' contention that the FAC asserts a wrongful foreclosure cause of action predicated on the theory that the Note was never transferred to Bank of America. Without elaboration or citation to authority, plaintiffs argue that "the Note was *never transferred* to Bank of America . . . and that the allegation asserted in said Assignment of [DOT] that Plaintiffs' Note was conveyed to Bank of America . . . is false and in reasonable dispute. Thus, the Assignment of [DOT] is fraudulent and void and the Note was never transferred to Bank of America at any time." Similarly, plaintiffs argue that "the absence of any stamped endorsements and/or Allonges attached to the Note further support [their] position that no such transfer of [the] Note has ever been conveyed to the parties listed on the Assignments of [DOT], or to any other party." Plaintiffs have failed to meet their burden to demonstrate that the trial court erred by providing legal argument supported by citation to legal authority. (*Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.) We are not required to supply arguments or examine undeveloped claims. (*Allen v. City of Sacramento, supra*, 234 Cal.App.4th at p. 52.) "When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration." (*Ibid.*)[3]

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[3] In the statement of facts section of their opening brief, plaintiffs assert that the foreclosure sale "occurred in direct violation of . . . the Bankruptcy Code" because the statutory automatic stay was in place at the time of the sale. Plaintiffs, however, offer no

3.2 *Remaining Causes of Action*

Plaintiffs have also failed to show error with respect to their remaining causes of action. Plaintiffs' opening brief offers no legal argument under separate headings addressing their causes of action for violation of the UCL (second cause of action), fraud by deceit (third cause of action), and violation of Civil Code section 2934a (fourth cause of action).

"The fact that we examine the complaint de novo does not mean that plaintiffs need only tender the complaint and hope we can discern a cause of action. It is plaintiffs' burden to show . . . that the demurrer was sustained erroneously . . . ." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.) It is a fundamental rule of appellate practice that "the trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited." (*Ibid*.) "It is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant's behalf." (*Id*. at p. 656.) "[T]he appellant must present each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; otherwise, the point will be forfeited." (*Ibid*.)

Plaintiffs' opening brief does not follow these rules or demonstrate error with respect to the trial court's ruling on their second, third, and fourth causes action. Accordingly, the demurrer was properly sustained as to those claims.

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legal argument on this point. Thus, any claim of error predicated on this theory has been forfeited.

3.3 *Other Contentions*

In their opening brief, plaintiffs repeatedly claim that the trial court misstated the allegations in the FAC in its written order sustaining defendants' demurrer. However, as previously indicated, the record does not contain the trial court's written order. Consequently, plaintiffs' claims of error are forfeited and, in any event, are not germane to our review. As we explained above, our analysis in reviewing the trial court's ruling is limited to the operative complaint's four corners, attached exhibits, and judicially noticeable matters. (*Hoffman, supra*, 179 Cal.App.4th at p. 400.) Thus, the trial court's characterization of the allegations in the FAC is irrelevant to our determination of whether a viable cause of action has been stated. (See *Qualcomm, supra*, 161 Cal.App.4th at pp. 203-204 [we review the trial court's ruling, not its reasoning]; *Rodas v. Spiegel, supra*, 87 Cal.App.4th at p. 517 [in reviewing an order sustaining a demurrer, the appellate court "is not bound by the trial court's construction of the complaint, but must make its own independent interpretation"].)

Plaintiffs also insist that we must accept as true their allegations in the FAC. To the extent plaintiffs contend that we must accept as true their allegations that certain transactions were void and not merely voidable, we disagree. "[A]n allegation that an instrument is 'illegal,' 'unauthorized' or 'void' is but a conclusion of law . . . ." (*Burlingame v. Traeger* (1929) 101 Cal.App. 365, 369; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 329 [allegation that the acts of a commission or board were " 'arbitrary, capricious, fraudulent, wrongful and unlawful' " are mere conclusions of law].) We do not assume the truth of conclusions of law found in the FAC. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 967.)

Finally, we reject plaintiffs' suggestion that reversal is required because the trial court erred in taking judicial notice of hearsay statements contained in recorded documents. When a court is required to rule on a demurrer, the discretion provided by

Evidence Code section 452 allows the court to take judicial notice of a fact or proposition within a recorded document " 'that cannot reasonably be controverted, even if it negates an express allegation of the pleading.' " (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264, disapproved on another ground in *Yvanova*, *supra*, 62 Cal.4th at p. 939, fn. 13.) A court may take judicial notice of numerous facts that can be deduced from recorded documents, including, among other things, their existence, recordation, and date of recordation, without overstepping the court's discretion under Evidence Code section 452. (*Fontenot*, at pp. 264-265.) "[T]he propriety of the court's action depends upon the nature of the facts of which the court takes notice from the document." (*Id.* at p. 265.) We review the court's decision to take judicial notice for abuse of discretion. (*Id.* at p. 264.)

Plaintiffs have not shown that the trial court relied on any statements made in the recorded documents they vaguely reference in their opening brief or that any such reliance was an abuse of discretion. The record does not include the trial court's ruling on defendants' request for judicial notice, the court's written order sustaining the demurrer, or the transcript from the hearing on the demurrer.

4.0 The Trial Court Properly Denied Leave to Amend

Plaintiffs have failed to show that there is a reasonable probability they could cure the defects in the FAC given further opportunity to do so. There is nothing in the record or in plaintiffs' appellate briefs showing they could amend the FAC to state a viable cause of action. In their opposition to defendants' demurrer, plaintiffs, without elaboration, requested leave to amend if the trial court sustained the demurrer in whole or part. In their appellate briefing, plaintiffs make no effort to show how they can amend the FAC to state a viable cause of action. Accordingly, the trial court did not abuse its discretion in sustaining defendants' demurrer without leave to amend.

DISPOSITION

The judgment is affirmed. Defendants shall recover costs of appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

s/BUTZ, J.

We concur:

s/RAYE, P. J.

s/HOCH, J.